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450389—42

# In the Supreme Court of the United States

OCTOBER TERM, 1941

No. —

THE UNITED STATES OF AMERICA, PETITIONER

*v.*

PEARLIE LAWSON, ADMINISTRATRIX OF THE ESTATE OF HOBART LAWSON, DECEASED, AND JOHN A. POLIN, ADMINISTRATOR OF THE ESTATE OF HENRY LAWSON, BENEFICIARY, DECEASED

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above-entitled case on January 12, 1942.

### OPINIONS BELOW

The District Court for the Eastern District of Kentucky rendered no opinion. The *per curiam* order of the Circuit Court of Appeals (R. 45) is reported in 124 F. (2d) 1020.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 12, 1942 (R. 45). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether compensation accruing to a World War veteran after he has become totally permanently disabled may be used under the provisions of Section 305 of the World War Veterans' Act to revive his lapsed war risk term insurance where such compensation was uncollected on the date of the death of the veteran.

An incidental question presented is—

Whether the fact that no issue was raised between the Government and an insured during his lifetime as to whether he was totally permanently disabled precludes a defense to a claim for the revival of lapsed insurance under Section 305 that the insured became totally permanently disabled at a time when no compensation was due him.

STATUTES INVOLVED

Section 305 of the World War Veterans' Act, as amended, will be found in the petition for a writ of certiorari in *The United States of America* v. *American National Bank and Trust Company of Chicago, Administrator, etc.*, No. 1038, present Term, filed March 13, 1942. A letter from

the Administrator of Veterans' Affairs to the Solicitor General, dated February 16, 1942, appears in the Appendix to that petition (pp. 12–14). The other pertinent statutory provisions and a letter from the Administrator of Veterans' Affairs to the then Solicitor General, dated January 14, 1941, appear in the Appendix to the Government's petition for a writ of certiorari (pp. 18–25) in *United States* v. *Florian,* 312 U. S. 656, nine copies of which have been filed with the petition in the *American National Bank and Trust Company* case for the convenience of the Court.

STATEMENT

This suit on a $10,000 policy of war risk term insurance was brought March 30, 1932, in the United States District Court for the Eastern District of Kentucky by respondent Pearlie Lawson, as administratrix of the estate of Hobart Lawson, deceased, and Henry Lawson, as the beneficiary of the policy (R. 1–5). Henry Lawson died and respondent John A. Polin, as administrator of his estate, was substituted as a party-plaintiff (R. 15–16). In an amendment to the petition (R. 15–17) the respondents sought benefits on the basis of an alleged revival of part of the insurance under Section 305, World War Veterans' Act, upon the death of the insured.

The case was tried before the court, without a jury (R. 20), upon a stipulation of facts (R. 20–31) which recited in effect that the insurance

lapsed June 1, 1919, while the insured was suffering from a compensable disability for which compensation was then uncollected (R. 21), and that on the date of his death, October 5, 1924 (R. 24), he was entitled to compensation remaining uncollected[1] (R. 25–26). It was further stipulated, however, that the insured became totally permanently disabled on June 10, 1924 (R. 24), that on that date he was not entitled to any uncollected compensation (R. 25), and that it was never the practice of the Veterans' Administration or its predecessors to use compensation, accruing after an insured became totally permanently disabled, to revive insurance under Section 305 upon the death of the insured (R. 26, 27–28, 30–31).[2]

The District Court made findings of fact (R. 36–38) substantially in accord with the stipulation and conclusions of law (R. 38) to the effect, *inter alia*, that the compensation remaining uncollected on the date of the insured's death (all of which accrued subsequent to the date of total permanent disability) was applicable to revive part of his insurance on the date of his death (R. 38).

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[1] Compensation in the amount of $128.40 was awarded upon an administrative rating of total permanent disability from June 10, 1924, which was made March 6, 1925, after the insured's death (R. 23–24, 25–26).

[2] It was also stipulated that a claim for insurance benefits was filed in the Veterans Administration June 9, 1931, and was denied October 27, 1931 (R. 24–25).

Judgment was accordingly entered, awarding insurance benefits to the respondents (R. 39–40). The Government appealed (R. 41). The Circuit Court of Appeals for the Sixth Circuit affirmed *per curiam* (R. 45) upon the authority of *American Nat. Bank & Trust Co.* v. *United States,* 124 F. (2d) 743 (C. C. A. 7), review of which, as previously stated, has been sought by the Government in a petition (No. 1038) filed March 13, 1942.[3]

**SPECIFICATION OF ERRORS TO BE URGED**

The errors to be urged are identical with those specified in the Government's petition for a writ of certiorari in *The United States of America* v. *American National Bank and Trust Company of Chicago, Administrator, etc.,* No. 1038.

**REASONS FOR GRANTING THE WRIT**

The present petition should be granted for the reasons set forth in the Government's petition for a writ of certiorari in *The United States of America* v. *American National Bank and Trust Com-*

[3] Simultaneously with the petition in the *American Nat. Bank & Trust Co.* case, the Government filed a petition for a writ of certiorari in the companion case of *The United States of America* v. *Anna Shepanek, Individually and as Administratrix of the Estate of William Babicz, also known as William La Valley,* No. 1039, involving the same questions and similarly decided by the Circuit Court of Appeals for the Seventh Circuit on the authority of its decision in the *American Nat. Bank & Trust Co.* case.

*pany of Chicago, Administrator, etc.*, No. 1038, and more fully elaborated in the Government's petition for a writ of certiorari in *United States* v. *Florian*, 312 U. S. 656.

Respectfully submitted.

CHARLES FAHY,
*Solicitor General.*

MARCH 1942.

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